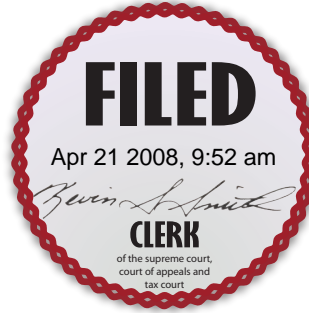


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TOWN & COUNTRY FORD, INC.,

Appellant-Defendant,

vs.

ROBIN A. DAVIS,

Appellee-Plaintiff.

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No. 26A01-0707-CV-332

APPEAL FROM THE GIBSON SUPERIOR COURT
The Honorable Walter H. Palmer, Senior Judge
Cause No. 26D01-0610-SC-1040

April 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

In this small claims action, the trial court, in construing an installment contract for the purchase of a used vehicle and a service contract for an extended service plan on the vehicle, found an ambiguity existed and entered judgment in favor of the purchaser, Robin A. Davis, and against the dealership, Town & Country Ford, Inc. (“Town & Country”). Finding no ambiguity in the contracts, we conclude that the trial court erred by entering judgment in Davis’s favor and reverse.

Facts and Procedural History

On January 10, 2003, Davis purchased a 2000 Ford Ranger from Town & Country for \$13,371.00 and a Ford extended service plan for \$995.00. At the time of purchase, the vehicle had 27,431 miles on it. Davis executed two documents as part of her vehicle purchase: (1) Retail Installment Contract and Security Agreement (“Installment Contract”); and (2) Indiana Service Contract and/or Maintenance Contract Terms & Conditions (“Service Contract”). One of the provisions in the Installment Contract provided:

Service Contract: With your purchase of the Vehicle, you agree to purchase a Service Contract to cover _____. This Service Contract will be in effect for 60 MONTHS 75000 MILES.

Plaintiff’s Ex. 1 (blank contained in original). The Service Contract provided that the “Warranty Start Date” was “04/29/00” and that the extended service plan “agreement begins on the date it was sold to you and provides coverage until the date or miles noted below, whichever occurs first.” Defendant’s Ex. A (formatting on date modified). Below this provision was a table, which provided, in relevant part:

Plan Months/ Expiration Date	Plan Distance (no tenths) and Expiration Distance
60	75000
04/29/2005	75000

Id.

In mid-September 2005, Davis was driving her vehicle when the engine, which “blew some head gaskets[,]” caught on fire. Tr. p. 12. Davis contacted Town & Country as well as another Ford dealership about repairing her vehicle and was informed that her service warranty had expired. Davis then took her vehicle to a different garage and had the engine replaced, which cost her \$3307.86.

In October 2006, Davis filed a notice of claim alleging breach of contract against Town & Country in the Gibson County small claims court. Davis sought reimbursement from Town & Country for the engine repair done on her vehicle. During a small claims hearing, Davis argued that there was an ambiguity between the Installment Contract and the Service Contract and that the ambiguity should be construed against Town & Country. Town & Country argued that the Installment Contract and the Service Contract were two separate documents and that the Service Contract, which was issued by Ford, unambiguously sets forth that the expiration date of the warranty was April 29, 2005. At the end of the hearing, the trial court stated that an ambiguity existed because the documents could be read to say that Davis “bought a 60 month contract from the date in which it was sold to her” or could be read to say that “she bought a 60 month contract that end[ed] 27, 28 months after she bought it[.]” *Id.* at 43. The trial court then issued an order and entered judgment in favor of Davis for \$3300.00 plus court costs of \$72.00.

Town & Country filed a motion to correct error, which the trial court denied. Town & Country now appeals.

Discussion and Decision

Town & Country argues the trial court erred when it determined that there was an ambiguity and that the terms of the Service Contract unambiguously showed that the extended service plan covered thereunder had already expired when Davis experienced engine problems.

Because this case was tried before the bench in small claims court, we review for clear error. *Lowery v. Housing Auth. of City of Terre Haute*, 826 N.E.2d 685, 688 (Ind. Ct. App. 2005). We will affirm a judgment in favor of a party having the burden of proof if the evidence was such that a reasonable trier of fact could conclude that the elements of the claim were established by a preponderance of the evidence. *Id.* We presume that the trial court correctly applied the law and give due regard to the trial court's opportunity to judge the credibility of the witnesses. *Id.* We will not reweigh the evidence, and we will only consider the evidence and reasonable inferences therefrom that support the trial court's judgment. *Id.*

The issue presented involves the interpretation of the parties' Installment Contract and Service Contract. The construction of the terms of a written contract is a pure question of law, and we review such questions *de novo*. *Orthodontic Affiliates, P.C. v. Long*, 841 N.E.2d 219, 222 (Ind. Ct. App. 2006). We must first determine whether the language of the contract is ambiguous. *Id.* The unambiguous language of a contract is conclusive upon the parties to the contract and upon the courts. *Id.* If the language of the

contract is unambiguous, the parties' intent will be determined from the four corners of the contract. *Id.* Conversely, if a contract is ambiguous, its meaning must be determined by examining extrinsic evidence and its construction is a matter for the fact-finder. *Id.* When interpreting a written contract, we attempt to determine the intent of the parties at the time the contract was made by examining the language used in the instrument to express their rights and duties. *Id.* We read the contract as a whole and attempt to construe the contractual language so as not to render any words, phrases, or terms ineffective or meaningless. *Id.* We favor an interpretation of the contract that harmonizes its provisions rather than one that places its provisions in conflict. *Id.* Furthermore, in the absence of anything to indicate a contrary intention, writings executed at the same time and relating to the same transaction or subject matter will generally be construed together. *Id.*

Here, the parties' dispute focuses on whether there is an ambiguity regarding the expiration date of the extended service plan. Applying the rules above, we note that the Installment Contract and the Service Contract, which were both executed on the same day, make reference to a service plan that covers sixty months. The Installment Contract referenced the fact that Davis "agree[d] to purchase a Service Contract" and that "[t]his Service Contract will be in effect for 60 MONTHS[.]" Plaintiff's Ex. 1. The Service Contract also provided that the service warranty lasted for sixty months but specified that the "Warranty Start Date" was "04/29/00" and that it expired on "04/29/2005[.]" Defendant's Ex. A. Construing these two documents, we conclude that there is no ambiguity. The Installment Contract makes reference to a sixty-month Service Contract,

and the Service Contract unambiguously provides that the sixty months was to begin on April 29, 2000 (which is apparently the date the vehicle was originally purchased) and was to end on April 29, 2005.

Here, Davis purchased her used 2000 Ford Ranger in January 2003. At that time, she purchased an extended service plan, thereby extending the warranty on the vehicle to sixty months from April 29, 2000 to April 29, 2005. Davis had problems with her engine in September 2005, which was beyond the date of coverage for the extended service plan. Accordingly, we must reverse the trial court's judgment entered in favor of Davis.¹

Reversed.

SHARPNACK, J., and BARNES, J., concur.

¹ Davis requests attorney fees pursuant to Indiana Appellate Rule 66(F). We deny Davis's request.